

# **CONFRONTING TERRORISM**

## **The 9/11 Commission Recommendations:**

### **Balancing Civil Liberties and Security**

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#### **Testimony**

#### **House of Representatives**

#### **Committee on Government Reform**

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<sup>1</sup> The opinions expressed in these remarks are my own and are not intended to and may not represent those of the members of or positions taken by Families of September 11.

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## INTRODUCTION

*Combating Terrorism: The 9/11 Commission Recommendations and the National Strategy* was the agenda heading for hearings held last year. There is an implicit semantic asymmetry in the use of the term “Combating Terrorism” that challenges discourse on the topic of this hearing – *9/11 Commission Recommendations: Balancing Civil Liberties and Security*. As will be apparent from the following remarks, “terrorism” is a method of dispute resolution. Draconian methods of war do not succumb to war, their uses are increased, not abated, by it.

Our combat (our war) must be with (against) terrorists. They must be isolated, captured or killed by our military and denied opportunities to attack us by our civil and intelligence infrastructures. But terrorism, the method, can only be marginalized (methods can never be defeated) by its global repudiation. That is done by civilians, not just in this country but around the world, insisting upon and acting to secure their basic freedoms, their civil liberties, in the face of the grave danger to all civilized people from the use by terrorists of their method, terrorism.

Subtitle B of H.R. 5017 or its likeness is necessary to the preservation of our core values as Americans and will enhance our security by repudiating and marginalizing terrorism as a method of international dispute resolution.

## WHAT IS TERRORISM?

“Terrorism” is a method employed by one or more groups to impose their will on others for the purpose of altering their power relationships, characterized by the threat or use of extreme violence to injure and kill “innocent” civilians and damage and destroy their property.<sup>2</sup> The word “innocent” is put in quotation marks for two reasons. What it means to be “innocent” might be debated by some and because it begs the questions to be explored in these remarks. If the rules governing the alteration of the balance of global power allow for the methods employed by terrorists (i.e., terrorism), will the notion of the “innocent civilian” become obsolete? Can there be anyplace where people are free to conduct their daily affairs in peace? Will we all be transformed into combatants to save ourselves – devolving into chaotic violence?

In his State of the Union address on January 6, 1941, President Franklin Roosevelt said: “In the future days which we seek to make secure, we look forward to a world

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<sup>2</sup> While the United Nations has not yet accepted a definition of terrorism, the UN's “academic consensus definition,” written by terrorism expert A.P. Schmid and widely used by social scientists, reads:

Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby — in contrast to assassination — the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat- and violence-based communication processes between terrorist (organization), (imperiled) victims and main targets are used to manipulate the main target (audience[s]), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought.

Schmid, 1988.

In November 2004, a UN panel described terrorism as any act: “intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act.”

founded upon four essential human freedoms.” He identified those freedoms as freedom of speech and expression, freedom of every person to worship God in his own way, freedom from want and freedom from fear. Less than seven years later, December 10, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights which, in its thirty Articles, affirmed a global commitment to these four freedoms for all the people of the world. It is in the sense of these people that I use the term “innocent.”

The freedoms proclaimed by President Roosevelt and addressed in the Universal Declaration of Human Rights are freedoms belonging to “civilians” (e.g., soldiers cannot expect to be free from fear and want and to speak their minds). Among them are the “civil liberties” that Subtitle B of H.R. 5017 is designed to protect.

The last of the thirty Articles of the Universal Declaration of Human Rights attempts to secure those freedoms by declaring that:

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

But the struggle to secure these basic freedoms to be innocent civilians cannot succeed by “Declarations” alone. In 1993, the World Trade Center was bombed killing six. In 1997, a leaflet was found in the split-open remains of one of 62 tourists murdered in Luxor, Egypt, demanding release of Sheik Abdul Rahman, a blind cleric serving a life sentence in the US for planning to commit terrorism in New York in 1993, and by February 1998 al-Qaeda had made its own declaration – a declaration of war with the American people. Six months later, in August, it attacked the US Embassies in Tanzania

and Kenya killing 257 people, including 12 Americans, and injuring 5,000 others, culminating in the attacks in the United States on September 11, 2001, killing nearly 3,000 innocent civilians. Article 30 of the Universal Declaration of Human Rights had been in place for over fifty years on that date, and it is not now stopping the chaos in Iraq and Darfur. Nor can military force alone stop it.

### **SEMANTICS OF WAR AND TERRORISM**

Much of the discourse in this country about terrorism centers around the expression “war on terrorism” or its close variant “war on terror.” Webster and other lexicographers give to “war,” “on,” “terrorism” (and “terror”) a variety of definitions each. But the combined use of these words in a single expression, without context, has no clear meaning and in context is usually an obscure emotive inflammatory: nearly always so when conjoined with September 11, 2001.

“Terrorism” is a method of waging war. One can never engage in a war, to say nothing of win a war, on a method of war. There is a tautology imbedded the terms “War on Terrorism” and “War on Terror,” and their uses are at best benignly diversionary and at worst serve as exclamation points added to assertions that deserve serious debate that is foreclosed by their raw emotional impact.<sup>3</sup>

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<sup>3</sup> Although *The 9/11 Commission Report* acknowledges that terrorism is a “tactic,” it attempts to justify the use of the expression “War on Terrorism” by claiming that “[c]alling this struggle a war accurately describes the use of American and allied forces to find and destroy terrorist groups and their allies in the field, notably in Afghanistan.” See page 363. But this only blurs the concept of a method of warfare with the people who use it.

The war (combat) we talk of must be “against terrorists,” not “on terrorism.” If we talk about terrorism, we should talk of its repudiation. To repudiate: to reject as untrue or unjust, cast off, spurn.

We cannot defeat “terrorism” with war: the armed hostilities glorified by terrorists. Only when there is global disdain for, repudiation of, “terrorism” will “terrorists” (those who use the method) be marginalized and their numbers depleted. As Martin Luther King, Jr., said, “Wars are poor chisels for shaping peaceful tomorrows.” The discourse must change. Soldiers can and should capture, isolate and kill terrorists – the actors, their handlers and co-conspirators. They cannot effect the “repudiation of terrorism.” That is a job for civilians.

### **WHY IS THERE TERRORISM?**

The very existence of terrorism is dependant upon acceptance of the method by a constituency. And there is one. It consists of the poor, the uneducated, the hopeless, the hungry, the oppressed and the proud. And there are many of them. Many more of them than there are those who are the targets of terrorists.

It is not the primary purpose of terrorists to kill, maim and destroy. The violence is symbolic<sup>4</sup> and the symbol the more effective when those who suffer from the violence suffer more horribly, are more numerous and are more innocent. The more outrageous,

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<sup>4</sup> Clive Walker, a Professor of Criminal Justice Studies and author of several articles on terrorism has said: “Terrorism attacks are devastating but are largely conceived and carried out as symbolic with their real impact directed at the state. Terrorism is a sub-form of political violence and should be viewed as at the pinnacle of risks and liabilities for our political system because it seeks to perpetrate harms which threaten the entire population and political economy. By comparison, auto accidents, earthquakes, and other natural disasters may also have terrible results but they do not put at risk the system of our society and the existence of our state.”

apparently senseless and dramatic the behavior, the more attention the terrorist message gets. The terrorism attacks in America on September 11, 2001, serve as a tragic example of this phenomenon.

The “true” message of a terrorist act is always obscure, lending more horror to the event and leaving its interpretation to the differing minds of its observers. But, whatever the motives of those who conspired with, planned, financed and executed the September 11<sup>th</sup> attacks, those attacks sent a message understood by the terrorists’ non-participatory constituency to present a challenge or, rather, declare something like this:

We do not agree that those we target and others like them can have all that they have while those who believe in us suffer so and we propose that we resolve our disagreements with you in a new way, because the old ways are not working for us. We do not have the numbers of soldiers and weapons that you do, so we will not engage them directly, for we know we will lose. Nor do we have the economic resources or know-how to successfully compete with you in the marketplace. So, we will not debate with you about what bothers us, because you won’t listen and we will get nothing.

War, always the ultimate method of international dispute resolution, will be our means of equalizing our economic and power relationships with you. But, we are going to use new rules for engagement in and conduct of our war with you, because under the old rules you have always won and would continue to win.

Our message to you is this. These are the new rules of war. We will strike without any predicate provocation or act of aggression by you (imminent or in fact) and when we do we will find ways to target specifically and kill your civilians, those who support you and your political leaders. Both sides will suffer losses, as always occurs in war, but instead of not knowing just who will die for us, we will designate them at the outset while you will leave the deaths of your soldiers to chance. Using our methods we can dramatically increase the



number of those we kill in proportion to those who give their lives for us.

Whether you call our rules variants of your rules of “double effect,” “proportionality” and “utility” or unprecedented new rules, they are now the rules because we say they are and because we will play only by them. Under your rules you accept, as a necessary incident of war, civilian deaths, but only if those deaths are the unintended effect of your intention to kill your adversary’s combatants, subject of course to your “extreme necessity” exception. Under your rules of proportionality, you claim that civilian deaths must be small in proportion to those combatants you hope to kill. And, of course, under your rules you know that some of those (but not precisely whom) you send to kill will die (some at your own hands), but expect and hope that fewer of them will die than those they kill. In short, under your rules the deaths of your soldiers and your adversary’s civilians are just as certain as under ours: the only difference is you don’t intend them and we do. And where your very way of life is threatened (i.e., what you call “extreme necessity”), your rules permit civilians to be the targets and the proportion of those civilians killed to enemy combatants to be high. We reject your rule that political leaders are safe from the killing of war. Your leaders will be our targets and ours will not be easily known or found by you.

Although we need no justification and give none, by these acts of what you call “terrorism,” we proclaim “extreme necessity.” The way of life of those who support us is so dismal, hopeless and full of fear in the face of your economic and military supremacy you have left us with no choice.

But there are choices.

## **PRESERVING OUR NATIONAL BEING**

At the turn of the twentieth century, George William Russell (AE), one of Ireland’s most distinguished literary men, wrote *The National Being*. In addressing the Irish problems in the early days of World War I he said, “We have to discover what is

fundamental in Irish character . . . the affections, leanings, tendencies toward one or more of the eternal principals which have governed and inspired all great human effort, all great civilizations from the dawn of history.”

Nearly a century later, we Americans have to discover what is fundamental in the American character and demonstrate to the world that we will not allow the threat of purposeful violence against our innocent civilians to alter our fundamental values. And this demonstration cannot be made alone by employing the very violence that is the stock in trade of terrorists. An attempt to do so will fail and only prove true Russell’s sad assertion in *The National Being* that “no law is more eternally sure in its workings than that which condemns us to be as that we condemned.”

Many will remember the television images of the triumphant faces in the cheering crowds in some parts of the world as news of the September 11<sup>th</sup> attacks spread. Those faces belonged to the constituency the terrorists claim to serve. Why did they exalt at the death and destruction?

Many of those who cheered are uneducated, and it is easy to say that terrorism’s effectiveness can be eroded by educating the terrorists’ constituency. It is harder to accept responsibility for educating ourselves about them. This is our first and most difficult choice. Who are these people? They all have mothers who once loved and protected them. Many are fathers who want to preserve for their children the culture of which they are proud and that has allowed for their survival and the survival of their ancestors over centuries. They were all once innocent children like all those killed on September 11<sup>th</sup>. And they and their relatives are teaching their children not only about their history and

culture, but also about their perceptions of us. Unless we educate ourselves about these people, we have no hope of educating them about us. Thus, the civilian populations put at risk by terrorism – we – have no choice but to open our minds to other ways of thinking about the world and its people. Only if we make this choice will their minds, the uninformed minds we must touch, be open to us.<sup>5</sup>

What we impart to those minds will not be what we say, but what they observe us do. We must conduct ourselves with the courage of those we hope to touch. They face hunger, deprivation, fear, oppression and death every day. Most have never known the civil liberties we have and have for too long taken for granted. We must face the danger of terrorist attacks with a clear eyed resolve that, do as they will, we will not be diverted from our commitments to the very freedoms that have made our country great, among them the freedoms of religion, of expression, and from fear. These are the civil liberties Subtitle B of H.R. 5017 seeks to preserve.

What of the fourth of President Roosevelt's four freedoms – freedom from want? Many in those cheering crowds were and, likely still are, poor and hungry. Those of us who have an excess of wealth must choose to share it with them and our government policies must encourage this sharing. The operative word here is "share." We must become partners with and give strength to the very people who terrorists incite and rely upon to applaud their method – terrorism. As counter intuitive as this appears, it is a choice we must make, because it is the despair and lack of hope that poverty and hunger bring that must be reversed to turn from the terrorists the constituency that supports them.

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<sup>5</sup> See *9/11 Commission Report*, "Engaging the Struggle of Idea" at pp. 375-378.

We can make this choice in many ways. We can do it by the way we cast our votes in the political process. We can do it in our private giving. We can do it in our banking and business dealings. We will have to sacrifice some, even many, of our profits and pleasures in the process. But, however we do it, we must do it, not giving down, but giving across to co-equals in the experience of life – sharing with those in cultures we do not yet, but must, come to understand. This too will not be easy, nor can it be done from a remove. But it must be done if we are to marginalize terrorism. We who have so much cannot be indifferent to the plight of those who applaud, but do not participate in, the use of terrorism. For if we are, they will be indifferent to the suffering terrorism has brought and will bring to us.

This may sound to some like do-gooder proselytizing, but it is not. It is a hard, pragmatic assessment of what we who call ourselves educated, enlightened and civilized must do if we are to be effective in the repudiation of terrorism; if we are to be effective in preserving the civilization we have come to rely upon to protect us and the civil liberties central to our culture. Put another way, to avoid a spiral of violence that compels us all to become combatants, we must do these things. That it does or does not conform to some moral imperative is irrelevant.<sup>6</sup>

In the end, our behaviors, not our declarations, are the only ways to undermine the root causes for the use of terrorism. We must reject the notion that terrorism as a means to alter the global balance of power can ever succeed in taking away our civil liberties and

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<sup>6</sup> See the recommendation at page 379 of the *9/11 Commission Report*. I do not agree with the statement that immediately precedes that recommendation that “[t]errorism is not caused by poverty,” although I do agree that “many terrorists come from relatively well-off families.” See page 398 of the report. Here, again, the Independent Commission Report conflates the perpetrators with their method and ignores the broad non-participatory constituency that applauds their use of terrorism.

convince, particularly would-be terrorists, that the converse is true – that use of force intended to kill and frighten innocent civilians (the method, “terrorism”) will only strengthen our resolve to adhere to our core values. Obstinate insistence upon preservation of our civil liberties, in the face of danger from those who would deny them, will demonstrate to the terrorists and the rest of the world that terrorism has no place in civilized society. Only then will the cheers of the crowds be turned to scorn and the use of terrorism relegated to history.

But this will take time, perhaps generations, and cannot be done by military force alone. As we do these things, we must strengthen our civil institutions and private sector infrastructures at home and engage our civilian populations in risk awareness, vigilance and deterrence activities calculated to protect us from those who would do us harm. Above all we must preserve the essential character of our nation. After all, that is what the terrorists want to undermine. They want to make us like them. We must prove false the prophesy of George Russell that “[a]ll great wars in history, all conquests, all national antagonisms, result in an exchange of characteristics.”

How do we do this? We must insist upon preservation of the essential character of this nation, inform our citizens of the risks we must take to preserve it, and embolden them to take those risk.

In 1765, shortly after news of the Stamp Act reached the American colonies, John Adams completed “A Dissertation on the Canon and the Feudal Law” in which he wrote:

Be it remembered that liberty must at all hazards be supported. We have a right to it, derived from our Maker. But if we have not, our fathers have earned and bought it for us at the expense of their ease, their estates, their pleasure,

and their blood . . . . And liberty cannot be preserved without a general knowledge among the people who have a right from the frame of their nature to knowledge, as their great Creator who does nothing in vain, has given them understandings and a desire to know. But besides this they have a right, an indisputable, unalienable, indefeasible divine right to the most dreaded and envied kind of knowledge, I mean of the character and conduct of their rulers.

The victims of the September 11 attacks paid a price for the liberty they had, and those who survive them have a right to know the true nature of the risks they face, what their government is doing to confront those risks and how their essential freedoms are being affected in the process. And they must be emboldened to face those risks with courage and to preserve their liberty in the process.

The repudiation of terrorism (the method) requires not only that terrorists be denied a victory over the values that define us as a nation but that we serve as an example to the rest of the world, letting it know that we will risk injury, death and deprivation to preserve what has made our nation great. This is not to say we must be unwise in the steps we take to protect against replication of the September 11<sup>th</sup> horrors. But wisdom arises from suffering and cannot be applied in its denial. Our laws must never compromise what the victims of September 11<sup>th</sup> lived, suffered and died for.

Excessive secrecy must be eliminated. Here, too, a core element of our national being is at stake. As John Adams observed, no democracy can long survive without public knowledge of the conduct of its leaders. To shroud that conduct in the false cloth of national security exigency is to grant the terrorists another victory. What is false or true cloth cannot be decided by the wearer alone. And when all branches of our government fail us in this, those who try to tell us the truth should be granted immunity when they do.

Otherwise, we will never know the conduct of our leaders. And to those who say the search for what is true or false justification for secrecy undermines what they call the “war on terrorism,” I say not doing so does worse. Secrecy and false reasoning are at the heart of the Al Qaeda strategy. We must not allow ourselves to exchange our characters with those of the enemy.

## **CONCLUSION**

Our discourse must be intellectually rigorous and honest. “Terrorists” must not be conflated with their method, “terrorism,” nor should their poor, uneducated and disheartened, non-participatory constituency be classified and treated as “terrorists.” We must come to know these people and give them a chance to know us. We must show them and the rest of the world by our behaviors that we will not abandon the values that define us as a nation – that we care about them, that we have the courage to preserve our civil liberties in the face of the risk of death at the hands of those they applaud, that they too can have these liberties, and that terrorism has no place in a civilized world.

The conduct of our leaders as they face these deadly threats must be made known to us and exceptions closely monitored by branches of government independent of them. Leaders in the Executive branch must be monitored by the Legislature and both, ultimately, by the Judiciary. And those who expose the truth should be protected (not condemned) when all our leaders fail us in this. Our democracy depends upon it.

If we do not confront challenges to the freedoms that define us as a nation, we capitulate to the terrorists, further alienate their constituency from us and embolden the use of terrorism. It is the purpose of terrorists to diminish our civil liberties. To avoid this

outcome our leaders must candidly inform us of the dangers we face and encourage us to confront them. Our countrymen must be stakeholders in and vigorously defend their basic liberties, the freedoms (of expression and religion and from fear and want), that are the soul of our national being and set that example for the rest of the world. Subtitle B of H.R. 5017 attempts to do this by assuring that we are allowed the freedom to believe as we will and express ourselves without fear of retribution from our own government. Whether it will or not remains to be seen. It may not be strong enough. But if it, or its close cousin, is not enacted into law, essential elements of our national life, our civil liberties, are at risk of unwitting loss – just what the terrorists want – and terrorism, the method, will continue, whatever success our military may have in isolating, capturing and killing the terrorists who now use it.